

Food and Drug Administration, HHS

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(2) If a person fails to submit a list of nominees as required by paragraph (b) of this section, the Commissioner may choose a qualified member without further consultation with that person.

(3) The Commissioner will announce the members of a Board by filing a memorandum in the record of the proceeding and sending a copy to all participants.

(d) Instead of using the selection method in paragraphs (b) and (c) of this section, the director of the center, the other parties to the proceeding, and any person whose petition was granted and is the subject of the hearing, may, with the approval of the Commissioner, agree that a standing advisory committee listed in §14.80 constitutes the Board for a particular proceeding, or that another procedure is to be used for selection of the members of the Board, or that the Board consists of a larger number of members.

(e) The members of a Board serve as consultants to the Commissioner and are special Government employees or Government employees. A Board functions as an administrative law tribunal in the proceeding and is not an advisory committee subject to the requirements of the Federal Advisory Committee Act or part 14.

(f) The Chairman of the Board has the authority of a presiding officer set out in §12.70.

[44 FR 22348, Apr. 13, 1979, as amended at 50 FR 8994, Mar. 6, 1985]

§ 13.15 Separation of functions; ex parte communications; administrative support.

(a) The proceeding of a Board are subject to the provisions of §10.55 relating to separation of functions and ex parte communications. Representatives of the participants in any proceeding before a Board, including any members of the office of the Chief Counsel of FDA assigned to advise the center responsible for the matter, may have no contact with the members of the Board, except as participants in the proceeding, and may not participate in the deliberations of the Board.

(b) Administrative support for a Board is to be provided only by the of-

fice of the Commissioner and the office of the Chief Counsel for FDA.

[44 FR 22348, Apr. 13, 1979, as amended at 54 FR 9035, Mar. 3, 1989]

Subpart B—Hearing Procedures

§ 13.20 Submissions to a Board.

(a) Submissions are to be filed with the Division of Dockets Management under §10.20.

(b) The person making a submission shall serve copies of it on each participant in the proceeding, except as provided in §§13.10(b)(2) and 13.45. Submissions of documentary data and information need not be sent to each participant, but any accompanying transmittal letter, summary, statement of position, certification under paragraph (d) of this section, or similar document must be.

(c) A submission must be mailed to the address shown in the notice of appearance or personally delivered.

(d) All submissions are to be accompanied by a certificate of service, or a statement that service is not required.

(e) No written submission or other portion of the administrative record may be held in confidence, except as provided in §§13.10(b)(2) and 13.45.

(f) A participant who believes that compliance with the requirements of this section constitutes an unreasonable financial burden may submit to the Commissioner a petition to participate in forma pauperis in the form and manner specified in §12.82.

§ 13.25 Disclosure of data and information by the participants.

(a) Before the notice of hearing is published under §13.5, the director of the center responsible for the matters involved in the hearing must submit to the Division of Dockets Management—

(1) The relevant portions of the existing administrative record of the proceeding. Portions of the administrative record not relevant to the issues in the hearing are not part of the administrative record;

(2) A list of all persons whose views will be presented orally or in writing at the hearing;

(3) All documents in the director's files containing factual information, whether favorable or unfavorable to

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the director's position, which relate to the issues involved in the hearing. *Files* means the principal files in the center in which documents relating to the issues in the hearing are ordinarily kept, e.g., the food additive master file and the food additive petition in the case of issues concerning a food additive, or the new drug application in the case of issues concerning a new drug. Internal memoranda reflecting the deliberative process, and attorney work product and material prepared specifically for use in connection with the hearing, are not required to be submitted;

(4) All other documentary information relied on; and

(5) A signed statement that, to the best of the director's knowledge and belief, the submission complies with this section.

(b) Within the time prescribed in the notice of hearing published under §13.5, each participant shall submit to the Division of Dockets Management all information specified in paragraph (a)(2) through (5) of this section and any objections that the administrative record filed under paragraph (a)(1) of this section is incomplete. With respect to the information specified in paragraph (a)(3) of this section, participants are to exercise reasonable diligence in identifying documents in files comparable to those described in that paragraph.

(c) The submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the Board, on a showing that the views of the persons or the material contained in the supplement was not known or reasonably available when the initial submission was made or that the relevance of the views of the persons or the material contained in the supplement could not reasonably have been foreseen.

(d) The failure to comply substantially and in good faith with this section in the case of a participant constitutes a waiver of the right to participate further in the hearing and in the case of a party constitutes a waiver of the right to a hearing.

(e) The Chairman rules on questions relating to this section. Any partici-

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pant dissatisfied with a ruling may petition the Commissioner for interlocutory review.

[44 FR 22348, Apr. 13, 1979, as amended at 50 FR 8994, Mar. 6, 1985; 54 FR 9035, Mar. 3, 1989]

§ 13.30 Proceedings of a Board.

(a) The purpose of a Board is to review medical, scientific, and technical issues fairly and expeditiously. The proceedings of a Board are conducted as a scientific inquiry rather than a legal trial.

(b) A Board may not hold its first hearing until after all participants have submitted the information required by §13.25.

(c) The Chairman calls the first hearing of the Board. Notice of the time and location of the first hearing is to be published at least 15 days in advance and the hearing will be open to the public. All participants will have an opportunity at the first hearing to make an oral presentation of the information and views which in their opinion are pertinent to the resolution of the issues being considered by a Board. A participant's presentation may be made by more than one person. The Chairman determines the order of the presentation. Participants may not interrupt a presentation, but members of the Board may ask questions. At the conclusion of a presentation, each of the other participants may briefly comment on the presentation and may request that the Board conduct further questioning on specified matters. Members of the Board may then ask further questions. Any other participant may be permitted to ask questions if the Chairman determines that it will help resolve the issues.

(d) The hearing is informal and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views may be made or considered, but other participants may comment upon or rebut all such information and views. No participant may interrupt the presentation of another participant for any reason.

(e) Within the time specified by the Board after its first hearing, participants may submit written rebuttal information and views in accordance with §13.20. The Chairman will then